

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-40897-2019 (O&M)
Date of Decision:-3.2.2020

Prit Pal Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. H.P.S.Ghuman, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

GURVINDER SINGH GILL, J.(Oral)

CRM-3928-2020 in CRM-34092-2019

In view of the reasons mentioned in the application, the same is allowed and the matter is preponed from 14.5.2020 to 3.2.2020.

The application stands disposed of accordingly.

Main case

1. By way of filing this petition, the petitioner assails order dated 8.9.2009 (Annexure P-12) wherein he has been declared a proclaimed offender.
2. The learned counsel for the petitioner has submitted that in the present case, the procedure prescribed under Section 82 Cr.P.C. has not been adhered to in letter and spirit and in fact clear period of 30 days, as mandated under the aforesaid provisions, has not been afforded to the petitioner. The learned counsel, in order to hammer forth his aforesaid submission, has drawn the attention of this Court to a copy of proclamation notice dated 4.8.2009 (Annexure P-9), a perusal of which shows that while the proclamation notice

was issued on 4.8.2009, the accused was directed to cause appearance on 28.8.2009 which itself a period less than 30 days.

3. Section 82 Cr.P.C. is reproduced below :-

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation **requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.**

(2) The proclamation shall be published as follows:-

- (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
- (c) a copy thereof shall be affixed to some conspicuous part of the Court- house;
- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

4. This Court in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in

case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:

“4. In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside.”

5. A perusal of the statement of serving official (Annexure P-11) shows that the proclamation was effected on 6.8.2009. Subsequently, it appears that the matter was adjourned and the petitioner was declared a proclaimed offender vide impugned order dated 8.9.2009. It is apparent that after the proclamation was effected on 6.8.2009, the petitioner was not afforded a clear period of 30 days to cause his appearance, as he was required to cause appearance on 28.8.2009. Adjourning the matter thereafter would not cure the aforesaid defect.
6. Bearing the aforesaid facts in mind and also in view of the law laid down in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550, the petition is accepted and the impugned order dated 8.9.2009 is hereby set aside.

3.2.2020

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No